IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE FIRST DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.4084 of 1993

Between:

Shikari Gangaram, S/o. Umapathi.
Allampalli Village, Kadem Mandal,
Adilabad.

...PETITIONER

AND

1. The Commissioner of Land Revenue, Andhra Pradesh, Hyderabad.
2. The Chief Conservator of Forests, Andhra Pradesh, Hyderabad.
3. The Divisional Forest Officer, at Nirmal, Adilabad District.
4. The District Collector, Adilabad District at Adilabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ or writs, order or direction, declaring the order dated 14/02/1991 passed in Case.No.BB4/2541/86 on the file of the 1st respondent, and the consequential notice issued by the 3rd respondent dated 19/08/1992 in Rc.No.2467/76/N4 as illegal, arbitrary, against the principles of natural justice and without jurisdiction, Award costs.

Counsel for the Petitioner: MR.K.RAGHUVEER REDDY

Counsel for the Respondents: GP FOR FORESTS

The Court made the following:

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.4084 of 1993

ORDER:

Heard Sri K.Raghuveer Reddy, the learned counsel appearing for the petitioner and also the learned Government Pleader appearing for Revenue.

The petitioner herein, who claims to be the owner and possessor of the lands in Survey Nos.80/2, 80/3, 80/4 and 80/5 admeasuring Acs.64.39 gts, situated at Allampalli Village of Adilabad District, files this Writ Petition, *inter alia*, seeking to assail the impugned order dated 14.02.1991, passed by the first respondent herein and also consequential notice issued by the third respondent dated 19.08.1992 as bad, illegal and void.

The case of the petitioner in brief is that the said lands are originally ancestral lands in the name of his grand father and subsequent to his death, he succeeded the same. It is also his case that initially his grand father's name was recorded as pattedar in the year 1961 and subsequent to survey, a supplemental sethwar was also issued to the Director concerned on 10.03.1961. Later, his father's name was also recorded as pattedar for the year 1967-68 and continued upto the year 1973-74.

Subsequent to his father's name, in the year 1974-75, his name was mutated, as per the Faisal Patti and all the revenue records. On 10.03.1961, the aforesaid supplemental sethwar was issued in the name of the petitioner's grandfather. The petitioner also states that he had been paying land revenue for the last more than sixty years and all the revenue records viz., Khasara Pahanis, Faisal Patti, Pahani Patrika, settlement record, stand in the name of the petitioner and earlier to him, in the name of his ancestors. The petitioner had applied to the third respondent for transit permits on 08.03.1974, duly enclosing patta certificate, who, in turn addressed a letter to the fourth respondent, to verify about the petitioner's ownership. Since there was no response, the petitioner had filed a Writ Petition No.2629 of 1978 which was disposed of on 06.02.1979, directing the fourth respondent to dispose of the said reference. Accordingly, after conducting an enquiry, the fourth respondent stated that these lands belong to the petitioner, as per the proceedings dated 29.05.1979, but, in spite of the same, no permit was granted. The petitioner had filed another Writ Petition No.4733 of 1979, for a direction to issue permits and the same was allowed on 16.10.1979, whereupon, the second respondent informed that the said letter cannot be treated as Revision under Section 166-B of the A.P. (Telangana Area) Land Revenue Act, 1317 Fasli ('the Act' for brevity). Thereupon, the Government had issued a memo dated 09.01.1985, directing the first respondent, to treat the letter of the second respondent as a Revision and dispose of the same. Yet without issuing any notice before admission, a notice was issued on 29.05.1990 to the GPA Holder of the petitioner for the purpose of appearance. Accordingly, on 06.08.1990, the petitioner's GPA Holder filed vakalat and requested time for filing counter. However, before the counter could be filed, the GPA Holder of

the petitioner died on 17.08.1990. The death intimation of the GPA Holder was informed to the first respondent and in spite of the same, no notice was issued to the petitioner nor any opportunity was given and the impugned order 14.02.1991 was passed *ex parte*, directing the third and fourth respondents to recover the cost of the timber taken by the petitioner. Subsequently, the third respondent issued a letter dated 19.08.1992, calling upon the petitioner to deposit an amount of Rs.8,04,907.25 ps. Therefore, the complaint of the petitioner *prima facie*, is that the impugned proceedings are totally without any notice and opportunity to him apart from the question that as to whether a letter as such, can be treated as Revision under the provisions of Section 166-B of the Act. Hence, the Writ Petition.

The respondents have filed counter-affidavit detailing the entire sequel of events leading to disposal of the Writ Petition, wherein, the petitioner was directed to pay the amounts towards the cost of the timber which he had taken. Further, it is submitted that there is no illegality with regard to the nature of the proceedings issued.

Considering the submissions made and also on perusal of the material available on record, the only question which arises for consideration is as to whether the impugned order dated 14.02.1991, is illegal and unsustainable.

There is no dispute by the respondent herein, to the aforesaid facts, as submitted on behalf of the petitioner, except to the extent of denying the ownership and patta of the petitioner as of the ancestors and there is no dispute that the said letter dated 11.01.1980, was ultimately directed to be taken up by the Government, as a

Revision under Section 166-B of the Act. Admittedly, neither the petitioner nor his GPA, which runs in person on his behalf, was given any notice or opportunity before the Government passed any such orders. Be that as it may, the fact also remains that even taking of such letter, by way of Revision, admittedly, a notice was served only on the GPA Holder of the petitioner, who had filed vakalat and sought time for counter. Unfortunately, the said GPA died and the same was also intimated to the authorities. In spite of the same, neither the counter-affidavit nor any of the records, as pointed out by the respondents disclosed the service of notice on the petitioner nor any opportunity was given to him before the impugned orders were passed on 14.02.1991. Further, there is also nothing on record to show that any opportunity was given to the petitioner to contest on his own either by filing a counter-affidavit or any other material in his support. Therefore, *ex facie*, the impugned order dated 14.02.1991, is without proper notice and opportunity to the petitioner. In view of the same, it is to be held that the same is violative of principles of natural justice and the matter requires to be reconsidered afresh on merits and after giving notice and opportunity to the petitioner, the question as to whether such a letter can be treated as Revision under Section 166-B of the Act or not as a whole, to be gone into by the authorities and pass orders thereon.

The Writ Petition is accordingly allowed and the impugned orders dated 14.02.1991 of the first respondent and also the consequential notice dated 19.08.1992 passed by the third respondent are set aside. The matter is remitted to the first respondent for giving proper opportunity and notice to the petitioner and dispose of the same, on merits in accordance with law.

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(B.PRAKASH RAO, J)

1st February 2005

RRB

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Tuesday, the first day of February 2005.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy To:

1. The Commissioner of Land Revenue, Andhra Pradesh, Hyderabad.
2. The Chief Conservator of Forests, Andhra Pradesh, Hyderabad.
3. The Divisional Forest Officer, at Nirmal, Adilabad District.
4. The District Collector, Adilabad District at Adilabad.
5. Two CCs to G.P. for Forests, High Court Buildings, Hyderabad (OUT).
6. Two CD copies.